

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 27, 2004

Agenda ID #3513

TO: PARTIES OF RECORD IN A.03-09-008 AND A.03-09-031

This is the draft decision of Administrative Law Judge (ALJ) Mattson. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN

Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

Decision **DRAFT DECISION OF ALJ MATTSON** (Mailed 4/27/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Gas Company (U904 G) For Authority to Revise its Rates Effective January 1, 2005, in its Biennial Cost Allocation Proceeding.

Application 03-09-008
(Filed September 3, 2003)

In the Matter of the Application of San Diego Gas & Electric Company (U904 G) For Authority to Revise its Rates Effective January 1, 2005, in its Biennial Cost Allocation Proceeding.

Application 03-09-031
(Filed September 17, 2003)

ORDER TO DISMISS

These two applications are dismissed without prejudice. Each utility shall file a new Biennial Cost Allocation Proceeding (BCAP) application within 60 days of the date the stay of Decision (D.) 04-04-015 is lifted or expires.

Background

Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) each filed a BCAP application in September 2003. On October 29, 2003, Marathon Oil Company moved for continuance of the BCAP proceedings until such time as the Commission adopted a decision in the

gas industry restructuring (GIR) implementation proceeding (Application (A.) 03-06-040). On November 17, 2003, the motion was granted.¹

The motion was granted, and the proceeding continued, since the applications were based on a “preferred case” outcome in the GIR matter, but the Commission was proceeding on the basis of a “compliance case.” Market structure can be reasonably foreseen to affect customer groups and important variables that influence BCAP outcomes. Applicants needed to refile their applications based on the compliance case, or other outcome from the GIR proceeding. It would have been inefficient to require amended applications based on the compliance case followed by further amendments should the GIR decision adopt a different outcome, particularly since the GIR order was expected reasonably soon after the date of the Ruling. As a result, SoCalGas was directed to file and serve an amended application within 21 days, and SDG&E within 28 days, of the date the Commission mailed its decision in the GIR proceeding.

The Commission adopted the GIR order on April 1, 2004, and it was mailed on April 5, 2004. (D.04-04-015.) The Commission, however, stayed the GIR order pending issuance of a decision in Phase 1 of Order Instituting Rulemaking (R.) 04-01-025 (gas industry market structure). In ordering the stay the Commission said:

“...in response to the assertion that the regulatory market structure [implemented in the GIR order here] may not be consistent with the

¹ See Ordering Paragraph 1 of Assigned Commissioner’s Ruling Granting Motion for Continuance Plus First Scoping Memo and Ruling of Assigned Commissioner dated November 17, 2003.

apparent direction the Commission may take in a recently issued Order Instituting Rulemaking (R.) 04-01-025 (2004 Gas OIR), we will issue a stay of this order until a decision has been issued in Phase 1 of the 2004 Gas OIR. This approach should provide an opportunity to reconcile any impacts the 2004 Gas OIR might have on a firm tradeable rights system or the market structure this decision implements...” (D. 04-04-015, *mimeo.*, page 67.)

The BCAP schedule was suspended by Ruling dated April 5, 2004, pending further ruling or a Commission order to dismiss.

Discussion

After giving this matter careful consideration, we find it is best to dismiss these applications. The Commission seeks to complete ratesetting proceedings within 18 months, but we are unlikely to be able to do so here. That is, 18 months from the dates of the applications would be about March 2005, and 18 months from the date of the Scoping Memo would be May 17, 2005. Assuming the GIR order is lifted or expires in August 2004, amended applications could be filed within 30 days, or in September 2004. Further assuming that the updated BCAP proceeding could be completed in about 1 year,² this matter would be finally resolved by about September 2005. This is well beyond the 18-month goal for ratesetting proceedings, whether measured from the dates of the original applications or the Scoping Memo. While the

² The original applications included proposed schedules that contemplated about 13 months from application to Commission decision. The Scoping Memo adopted an aggressive schedule that allowed about 10 months from the date of the amended applications to the Commission decision.

18 months is a goal, and can be extended for good reason, we are not persuaded that good reason exists here.³

Applicants must at least file updates to their applications when the stay of the GIR order is lifted or expires. When filed, those documents may be docketed either as amendments or new applications. It is more efficient and reasonable for the Commission to docket the showings as new applications. In this way the existing file will not be burdened with outdated applications that are amended and updated one or more times. Applicants can prepare each showing in an organized, clear, streamlined fashion without having to consider linking amendments to prior documents and explaining changes. It will be clearer for parties and the Commission to determine what is and is not proposed to be, and eventually received, in the record. Finally, this will focus the proceeding on the most relevant and up-to-date material.

Therefore, we dismiss these two BCAP applications without prejudice. Each applicant shall file a new BCAP application within 60 days of the date the stay of the GIR order is lifted or expires.⁴ If necessary, applicants may seek an

³ With few if any exemptions, we have consistently committed to complete proceedings within the 18-month timeframe originally stated by the Legislature as the goal for our work. (Senate Bill 960 and Assembly Bill 1735; also see November 17, 2003 Scoping Memo at page 6.) Recent law now requires that ratesetting proceedings be resolved within 18 months of the date of the Scoping Memo unless either (a) the Commission makes a written determination that the deadline cannot be met, or (b) the Assigned Commissioner states specific reasons in the Scoping Memo for the necessity of a later date. (Pub. Util. Code § 1705.1.)

⁴ The Commission said: “This order is stayed pending the issuance of a decision in Phase 1 of Order Instituting Rulemaking 04-01-025.” (Ordering Paragraph 4 of D.04-04-015.) Unless the lifting of the stay is specifically addressed in the Phase 1 or

Footnote continued on next page

extension from the Executive Director, who may, for good cause, grant an extension. (Rule 48(b) of the Rules of Practice and Procedure.)

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner, and Burton W. Mattson is the assigned Administrative Law Judge (ALJ) in these proceedings.

Comments on Draft Decision

The draft decision of ALJ in this matter was mailed to the parties on April 27, 2004, in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, 2004, and reply comments were filed on _____, 2004.

Findings of Fact

1. The adopted BCAP schedule directed applicants to file and serve amended applications within 28 days of the date the Commission mailed its GIR decision.
2. The GIR order was mailed on April 5, 2004, but was stayed pending Commission adoption of an order in Phase 1 of R.04-01-025.
3. The Commission seeks to complete ratesetting matters within 18 months.
4. It is now not reasonably possible to complete this matter within 18 months.
5. It is more efficient and reasonable for the Commission to docket updated BCAP showings as new applications, thereby not burdening the existing file with outdated information; allowing applicants to prepare organized, clear, streamlined showings without having to consider linking amendments to prior documents and explaining changes; making it clearer for parties and the

other order, the stay expires upon the issuance of the Phase 1 order. "Issuance" means the date the Commission mails the order to parties. (Pub. Util. Code § 1731(b).)

Commission to determine what is and is not proposed to be, and eventually received, in the record; and focusing the proceeding on the most relevant and up-to-date material.

Conclusions of Law

1. These applications should be dismissed without prejudice.
2. Applicants should file new BCAP applications within 60 days of the date the stay of D.04-04-015 is lifted or expires.
3. This order should be effective immediately to clarify the status of this proceeding and facilitate an orderly process for the timely filing of new applications.

O R D E R

IT IS ORDERED that:

1. These two applications are dismissed without prejudice. Southern California Gas Company and San Diego Gas & Electric Company shall each file a new application for a Biennial Cost Allocation Proceeding within 60 days of the date the stay of Decision 04-04-015 is lifted or expires.
2. Application (A.) 03-09-008 and A.03-09-031 are closed.

This order is effective today.

Dated _____, at San Francisco, California.